



June 14, 1999

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR99-1649

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 124940.

The City of Dallas Police Department (the "department") received a request on March 8, 1999 for information concerning officers who had been disciplined or terminated by the department. The requestor stated that she had not received all the information she had sought in prior requests that the department received on February 16, 1999. Specifically, the requestor asserts that she did not receive information regarding officers Rogelio Reyes and Charles Grayson. The prior requests sought information concerning officers who had been suspended or terminated over a five year period and officers who had been charged with sexual offenses, tampering with governmental documents, or official oppression. You had released some information responsive to the prior requests to the requestor on March 3, 1999. You inform us that the department's failure to release the information concerning the two named officers was an unintentional mistake, and that the information should have been included with the other documents released on March 3, 1999. However, you now claim that the requested information relating to two pending criminal cases against Rogelio Reyes for tampering with criminal records is excepted from disclosure under section 552.108 of the Government Code. You further claim that certain information is excepted from public disclosure by the common-law right of privacy encompassed by section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later

than the tenth business day after the date of receiving the written request. The ten-day deadline is a statutorily imposed deadline. Gov't Code § 552.301. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The department received the previous written requests for information on February 16, 1999. You released some information responsive to those requests on March 3, 1999. You have not informed this office, nor are we aware of the department's request for a ruling on the withholding of any information responsive to the prior requests. Prompted by the March 6 follow-up request, this office received your request for a ruling on March 22, 1999, more than ten business days after receipt of the requestor's previous written requests. Therefore, we conclude that, for information that is responsive to those earlier requests, the department failed to meet its ten-day deadline for requesting an opinion from this office. The only information at issue is the information concerning Rogelio Reyes which is responsive to the earlier requests.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). Because section 552.108 is designed to protect a governmental body's interest, we conclude that the department has waived the exception as to the submitted information as a result of its untimely submission of a request for an opinion from this office. *See generally* Open Records Decision No. 630 (1994) (demonstration of applicability of section 552.107(1) does not constitute compelling reason to overcome presumption of openness). Except for the information discussed below, you must release the submitted information to the requestor.

The submitted information contains information made confidential by law. First, you must withhold information under section 552.130 of the Government Code. Section 552.130 excepts information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the types of information you must withhold under section 552.130, including driver's license numbers and license plate numbers.

Second, the submitted information includes criminal history record information ("CHRI"). Section 552.101 excepts from disclosure "information considered to be confidential by law,

either constitutional, statutory, or by judicial decision.” Criminal history record information generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov’t Code § 411.082(2)(B), and must be disclosed. We have marked information excepted from required public disclosure by section 552.101 of the Government Code.

Third, some of the information constitutes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, and thus, is confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we have marked the information that you must withhold under section 552.101 of the Government Code as it is confidential pursuant to section 58.007(c) of the Family Code.


Fourth, the submitted information includes information that you must withhold under section 552.117(2) of the Government Code. Section 552.117(2) excepts from public disclosure the

home address, home telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We have marked the information that you must withhold under section 552.117(2).

Lastly, the submitted information includes information protected by common-law privacy which is encompassed in section 552.101. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, in *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates individual's right of privacy in a manner that the same individual records in an uncompiled state do not. We have marked the information that you must withhold as private information under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 124940

Encl.: Marked documents

cc: Ms. Valeri C. Williams
Senior Correspondent
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(w/o enclosures)